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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192965

DATE: January 24, 1980

MATTER OF: Aydin Energy Systems ^{DLG02692} --Reconsideration

[Claim for Relief From Alleged Mistake in Offer]

DIGEST:

Where there is sufficient information available to contracting officer to reasonably dispel any doubts as to the question of mistake, request for verification of prices offered in negotiated procurement is not appropriate, notwithstanding possibility that Government estimate may be later found to be in error to some extent.

Aydin Energy Systems (Aydin) requests reconsideration of our decision, Aydin Energy Systems, B-192965, September 6, 1979, 79-2 CPD 180, in which we denied its claim for relief from an alleged mistake in its offer discovered after the award of contract N00039-75-C-0331 by the Naval Electronic Systems ^{AGC00445} Command (NAVALEX). In that decision we held that although Aydin's offer was 39 percent lower than the only other offer received, the contracting officer was not on constructive notice of an error in Aydin's offer. The Aydin unit price of \$158,800 was about \$4,000 more than the initial Government engineering estimate of \$155,000 per unit and about \$3,000 less than the \$162,134 Government unit price estimate made for business clearance purposes prior to award.

Aydin now contends that the Government estimates were in error and that if a proper estimate had been prepared, the error in Aydin's offer would have been apparent to the contracting officer who would have then requested Aydin to verify its offer for possible errors. Thus Aydin seeks to now charge the contracting officer with constructive knowledge of the alleged error in that estimate.

While the protester relies for the most part on the language of our prior decision which held that there was no evidence of a mistake in the Government estimate, the issue here is not so narrow. In our

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view, the question is not, as Aydin suggests, whether the Government estimate was mistaken per se, but rather whether there was sufficient information available to the contracting officer to reasonably dispel any doubts as to the question of mistake, such that a request for verification of the prices offered by an offeror in a negotiated procurement would not be necessary. See Miller's Sawmill, Inc., B-188946, December 23, 1977, 77-2 CPD 499. We therefore do not believe it is necessary to decide whether or not the Government's estimate was actually mistaken.

With respect to advertised procurements, the Court of Claims has held that:

"[T]he task of ascertaining what an official in charge of accepting bids 'should' have known or suspects is, of course, not always an easy one. Mistakemaking contractors will naturally seek to impose upon such officials a rather high level of brilliance for the purpose of detecting the error. If, for instance, the knowledge of the Government's 'staff of experts' available to the contracting officer is imparted to such officer * * * then what the contracting officer 'should' have known would cover a very wide range indeed. However, the test * * * must be that of reasonableness, i.e., whether under the facts and circumstances of 'the particular case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer * * *,' without making it necessary for the agency's experts in every case to assume 'the burden of examining every * * * bid for possible error * * *'." Wender Presses v. United States, 343 F.2d 961 (Ct. Cl. 1965). [Citations omitted; emphasis added]

The same standard applies to negotiated procurements. See Autoclave Engineers, Inc., B-182895, May 29, 1975, 75-1 CPD 325. After evaluating all of the information that the contracting officer had prior to award, we conclude that the contracting officer reasonably cannot be charged with constructive knowledge of a mistake in Aydin's offer and therefore, no verification of that offer was required.

The facts upon which Aydin's request for reconsideration are based were all part of the original record before us and were considered in our original decision. For example, that record shows the \$162,134 estimate was based on Aydin's 1970 contract price, adjusted for inflation at 12% per year. In addition, NAVALEX conducted a detailed price analysis in which a comparison of unit prices of the supplies in question was made. That evaluation included a comparison of overhead rates between RCA (the other offeror) and Aydin, a consideration of learning curve and startup cost factors (Aydin had recent production experience as a result of foreign orders for the supplies whereas RCA had not produced the equipment since 1970) as well as a comparison of the price offered to the Government estimate. The agency concluded that the difference in overhead rates between RCA (194.5%) and Aydin (125%) could account for the majority of the \$63,000 per unit price difference. In addition, the agency concluded that the remaining price difference between Aydin's and RCA's offers could be accounted for by the fact that Aydin was currently producing spare modules and assemblies for the Marine Corps and had recent full production experience on the foreign orders for the equipment and would therefore have lower startup costs as well as lower loss of learning. After a reexamination of the record, we agree that the contracting officer's conclusions were reasonable. In this connection, even Aydin, the party in full possession of the exact facts, admitted that the difference in overhead rates could alone account for about 50% of the price differential.

Nonetheless Aydin contends that the Government knew that the cost of producing the radio sets in 1970 was substantially above the contract price and therefore should not have based its estimate solely on the adjusted 1970 contract price. In this regard, Aydin refers to an internal NAVALEX memorandum dated March 11, 1975, which indicates that the actual contractor cost was above the contract price. However, we have been advised that the higher estimated cost was an approximation based on an engineering estimate which included the cost of repairs to first run units which were not satisfactory. We also point out that Aydin itself was apparently unaware of any error for at least 4 months after it became aware of RCA's offer, even though it had full knowledge of its costs for the 1970 contract as well as the cost for its most recent production. Under the circumstances we do not believe the contracting officer "should have known" more than the offeror. Thus given the detailed analysis in the business clearance memorandum which we believe reasonably explains the 39 percent price difference between Aydin's and RCA's offers, we believe that the contracting officer could reasonably rely on the estimate as an additional basis to "dispel any doubts" as to the existence of a mistake in Aydin's offer.

Aydin also cites language from Appendix I to the Business Clearance Memorandum which states: "The price offered will be verified by the contractor's signature on the bilateral award sheet." Aydin argues that the contractor's signature on a bilateral award sheet could not be a "verification" of its offer since Aydin was given no notice of a possible error or requested to verify its bid for possible mistake. However, we have been informed by NAVALEX that the language cited by Aydin is the standard language used for every contract. It does not indicate that NAVALEX suspected an error in the contractor's price or that the contracting officer should have been on notice of a possible error.

Accordingly, since Aydin has not demonstrated any errors of fact or law in our earlier decision, that decision is affirmed. Local F76, International Association of Firefighters--Request for Reconsideration, B-194084, May 14, 1979, 79-1 CPD 344.

Michael J. Ascolan

For the Comptroller General
of the United States